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A limited liability partnership formed in the State of Delaware

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15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA
 17 SAN JOSE DIVISION

18 In re CONESCO INSURANCE CO. ANNUITY
 19 MARKETING & SALES PRACTICES LITIG.

Master File No. C-05-04726-RMW
 And Related Cases

20 CLASS ACTION

21 This Document Relates To:
 22 ALL ACTIONS.

23 **STIPULATION AND ~~PROPOSED~~
 ORDER REGARDING CONFIDENTIAL
 AND TRADE SECRET INFORMATION**

24 In order to protect confidential and trade secret proprietary information, good cause
 25 appearing, and based on the stipulation of the parties to this action by and through their attorneys of
 26 record, **IT IS HEREBY ORDERED AS FOLLOWS:**

1 This Order Regarding Confidential and Trade Secret Information ("Order") shall govern the
2 use of confidential information produced during discovery in this proceeding. For purposes of this
3 Order, the party designating information, documents, materials or items as confidential bears the
4 burden of establishing the confidentiality of all such information, documents, materials or items.

5 1. For the purposes of this Order, "Confidential" information means the following types
6 of documents and information:

7 (a) Information that constitutes a trade secret in accordance with Cal. Civil Code
8 § 3426.1;

9 (b) Financial or actuary projections, analyses or studies reflecting current or
10 future experience or actions;

11 (c) Non-public communications with regulators, Departments of Insurance or
12 other governmental bodies that are intended to be kept confidential and/or are protected from
13 disclosure by statute or regulation;

14 (d) Information, materials, and/or other documents reflecting non-public business
15 or financial strategies, and/or confidential competitive information which, if disclosed, would
16 result in prejudice or harm to the disclosing party; and

17 (e) Policyholder-specific information.

18 2. Any party may seek an amendment to this Order to designate confidential documents
19 and information in addition to the categories described in Paragraph 1 before production of any such
20 documents and information. The parties agree to meet and confer in good faith and attempt to reach
21 agreement on any request by a party to designate such additional categories of confidential
22 documents or information.

23 3. Confidential documents shall be so designated by stamping copies of the document
24 produced to a party with one of the following legends:

25 "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER" or "CONFIDENTIAL"

26 Any such stamp or designation shall not cover up, obscure or otherwise conceal any text,
27 picture, drawing, graph or other communication or depiction in the document.

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1 4. The designation of any material as "Confidential" pursuant to this Order shall
2 constitute the verification of counsel for the producing party that the material constitutes
3 Confidential information as defined in Paragraph 1 of this Order.

4 5. Material designated by a party or non-party or their counsel ("Designating Party") as
5 confidential under this Order (hereinafter "Confidential Material") shall be used by persons receiving
6 it only for the purposes of the litigation or settlement of this action. Confidential Material may be
7 used for such other purposes or in such other actions as agreed in writing by the parties or ordered by
8 the Court; provided, that all parties reserve their respective rights to request the Court in accordance
9 with applicable law that any Confidential Material may be used for purposes of related actions.

10 6. Confidential Material produced pursuant to this Order may be disclosed or made
11 available only to the following persons (hereinafter "Qualified Persons"):

12 (a) The parties to this action or an officer, director, or employee of a party
13 deemed reasonably necessary by counsel to aid in the prosecution, defense, or settlement of
14 this action;

15 (b) Counsel for the parties to this action ("Counsel"), including all partners and
16 associate attorneys of such Counsel's law firms and all clerks, employees, independent
17 contractors, investigators, paralegals, assistants, secretaries, staff and stenographic, computer,
18 audio-visual and clerical employees and agents thereof when operating under the direct
19 supervision of such partners or associate attorneys and who are actually working on this
20 action, all of whom shall be bound by this Order;

21 (c) The Court and any person employed or retained by the Court whose duties
22 require access to confidential material;

23 (d) Stenographic reporters or audio-visual personnel engaged in connection with
24 this action including deposition reporters, video operators and transcribers;

25 (e) Any person who created, authored, received or reviewed such Confidential
26 Material and those persons identified on such Confidential Material as creators, authors or
27 recipients of the Confidential Material;

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(f) Actual and/or potential trial or deposition witnesses, where counsel believes, in good faith, that disclosure is necessary to prepare for or develop the testimony of such witnesses;

(g) Experts or consultants retained by such counsel to assist in the prosecution, defense, or settlement of this action and their respective employees, associates or colleagues;

(h) Employees of firms engaged by the parties for purposes of photocopying, electronic imaging or computer litigation support in connection with this litigation; or

(i) Such other persons as may be designated by written agreement of Counsel or by order of the Court.

7. Prior to receiving any Confidential Material, each Qualified Person described in paragraphs 6(e) through 6(g) shall be provided with a copy of this Order and shall execute an Agreement to Maintain Confidentiality (hereinafter "Confidentiality Agreement") in the form of Attachment "A." Each such person signing a Confidentiality Agreement shall be subject to and bound by this Order. Counsel for the party seeking to disclose Confidential Material to any Qualified Person pursuant to paragraphs 6(e) through 6(g) shall be responsible for retaining the executed originals of all such Confidentiality Agreements and certifying that such individuals have complied with the requirements of Paragraph 15.

8. Any motion, pleading or other submission that contains or attaches Confidential Material shall be filed in compliance with Local Rule 79-5.

9. If a person receiving Confidential Material learns that, by inadvertence or otherwise, it has disclosed Confidential Material to any person or in any circumstance not authorized under this Order, that person shall request the recipient to return the Confidential Material including all copies thereof, and notify the party that produced the Confidential Material of the disclosure.

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1 10. Nothing in this Order shall prohibit disclosure of Confidential Material in response to
2 compulsory process or the process of any governmental regulatory agency. If any person subject to
3 this Order, including a person subject to a Confidentiality Agreement under this Order, is served
4 with such process or receives notice of any subpoena or other discovery request seeking Confidential
5 Material, such person shall promptly (not more than three (3) working days after receipt of such
6 process or notice) notify the Designating Party of such process or request, shall take all reasonable
7 steps to refrain from producing Confidential Material in response to such process, and shall afford a
8 reasonable opportunity for the Designating Party to oppose the process or to seek a protective order.

9 11. Counsel for any deponent or party may designate specific portions of deposition
10 testimony or exhibits as Confidential Material by indicating on the record at the deposition that the
11 testimony of the deponent or any exhibits to his testimony are to be treated as confidential. The
12 Court reporter shall separately bind such testimony and exhibits in a transcript bearing the legend
13 "Confidential – Subject To Protective Order" on the cover page. Failure of Counsel to designate
14 testimony or exhibits as confidential at deposition, however, shall not constitute a waiver of the
15 confidentiality of the testimony or exhibits. Upon receipt of the transcript of the deposition, Counsel
16 shall be entitled to designate specific pages and lines of the transcript or the exhibits as confidential
17 within 30 (thirty) days after receipt of the transcript. Until Counsel for the deponent or party
18 designates the transcript or exhibits as confidential, however, any other party shall be entitled to treat
19 the transcript or exhibits as non-confidential material.

20 12. No one may attend the portions of depositions or review the transcripts of the portions
21 of any depositions at which Confidential Material is shown or discussed other than those persons
22 designated in Paragraph 6 and outside counsel for any non-party deponent (who shall first sign the
23 Confidentiality Agreement).

13. A party or other person objecting to designation of any document(s) or material(s) as Confidential Material shall provide written notice of the objection to Counsel for the Designating Party, specifying the document(s) or material(s) that are the subject of the objection. Upon receipt of the written objection, counsel for the Designating Party shall, within twenty (20) days, provide a written response to the objecting party explaining the basis for the designation as Confidential Material; otherwise the document(s) or material(s) shall be deemed to be no longer Confidential without a court order. The parties and any other objecting person(s) shall confer in good faith in an effort to resolve the objection and any response by the Designating Party. If the objecting party or person and the Designating Party are unable to resolve the issue, the Designating Party, within fourteen (14) days after serving its written response to the objection notification, may file a motion with the Court to continue the designation of the document(s) or material(s) as "Confidential Material." In deciding such a motion, the Court shall make an independent determination as to whether or not the document(s) or materials) is Confidential and is entitled to protection under applicable law. To maintain confidential status, the Designating Party shall have the burden of establishing that the document(s) or material(s) constitutes Confidential Material as defined in Paragraph 1 of this Order, and is entitled to protection under applicable law. If the Designating Party does not file a motion seeking to maintain the "Confidential Designation" within fourteen (14) days after serving its written response to the objection to confidentiality, the document(s) or material(s) at issue shall be deemed to be no longer confidential.

14. If any Confidential Material is inadvertently provided to a discovering party without being marked as confidential in accordance with Paragraph 3 of this Order, the producing party may thereafter designate such materials as confidential and the initial failure to so mark the material shall not be deemed a waiver of its confidentiality. Until the material is designated as confidential by the Designating Party, however, the discovering party shall be entitled to treat the material as non-confidential. When the material is designated as confidential, the discovering party shall take prompt steps to assure that the material is marked as confidential or returned to the Designating Party for confidential designation pursuant to Paragraph 3 of this Order. The cost, if any, for gathering and/or marking this material as confidential shall be borne by the Designating Party.

1 15. Within sixty (60) days of final termination of this lawsuit, including all appeals,
2 (whether by judgment, settlement or otherwise) all materials produced by a party that contain
3 Confidential Material, including all abstracts and summaries of such material, shall be destroyed or
4 returned to Counsel for the Designating Party. Such destroyed or returned materials shall not
5 include the notes or work product of counsel for the parties, expert witnesses or consultants or
6 investigators or agents thereof. Counsel for each such party shall certify that the provisions of this
7 paragraph have been satisfied by sending opposing counsel a letter confirming compliance.
8 Reasonable out-of-pocket costs associated with returning or destroying Confidential Materials will
9 be borne by the party requesting its return or destruction.

10 16. No party receiving documents or materials designated as "Confidential Material,"
11 shall have any obligation to object to the designation at the time the designation is made or at any
12 time thereafter. No party shall, by failure to object, be found to have acquiesced or agreed to such
13 designation or be barred from objecting to such designation at any time.

14 17. Nothing contained in this Order shall be a waiver of any objection to the admissibility
15 of any evidence at trial, in any pretrial proceeding or on appeal.

16 DATED: September 11, 2006.

17 BAKER & MCKENZIE LLP
18 REED SMITH LLP

19 By



20 Linda B. Oliver
21 Attorneys for Defendant Conseco Insurance
22 Company
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1 DATED: September 11, 2006.

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3 BARRACK, RODOS & BACINE
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5
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13 Interim Co-Lead Class Counsel for Plaintiffs

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16 IT IS SO ORDERED.

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18 Dated: September 12, 2006

19 
Richard Seeborg
United States Magistrate Judge

EXHIBIT A

CONFIDENTIALITY AGREEMENT

Case Name: In re CONSECO INSURANCE CO. ANNUITY MARKETING & SALES PRACTICES LITIGATION

Case Number: Master File No. C-05-04726-RMW And Related Cases

1. I, _____, have read and understand the Stipulation and Order Regarding Confidential and Trade Secret Information (the "Order") in this action, dated __, 2006, and agree to be bound by its terms.

2. As set forth in the Order, I shall use Confidential Material, and the information in that Confidential Material, solely for the purpose of this litigation, and for no other purpose and no other case. I shall not disclose Confidential Material or the information in that Confidential Material except as permitted in the Order.

3. I hereby submit myself to the jurisdiction of the United States District Court for the Central District of California for the enforcement of these agreements and the Order.

Executed this ____ day of _____, ____.

[Signature]

[Type or Print Name]

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